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SIPDIS

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EB/IFD/OIA - ABRYAN
DEPT PASS TO USTR
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SUBJECT: ROMANIA: INVESTMENT CLIMATE STATEMENT, 2005

REF: STATE 250356

¶A. Openness to Foreign Investment

Encouraging Investment

Romania actively seeks foreign direct investment. A new center-right government that assumed power in late December 2004 has emphasized its desire to make Romania a more attractive investment destination and to improve aspects of the business climate. To date, despite Romania's marketplace of 21.7 million consumers, a well-educated workforce, and abundant natural resources, investment remains below potential. Favored areas for American investment include IT and telecommunications, biotechnology, manufacturing, and consumer products.

Romania is moving to lower tax rates and strengthen tax administration, enhance transparency, and create legal means to resolve contract disputes expeditiously. Until recently, legislative unpredictability continued to undermine investor confidence. Prospective U.S. investors should consult legal counsel to receive up-to-date legal information.

Successful U.S. companies tend to establish a local presence to familiarize themselves with the business climate. Using this expertise, firms develop longer-term strategies and commitments necessary for building lasting partnerships with the Government of Romania (GOR), local government authorities, labor unions, and local partners. These partnerships can ameliorate potential resistance to foreign investment that remains in some quarters, including nationalistic officials, workers fearful of losing their jobs, some managers of state-owned enterprises who are not accustomed to market economy business practices, and some local companies resisting competition through corrupt connections and practices.

Investments that involve the public authorities (GOR ministries, local public authorities) are generally more complicated than greenfield investments or joint ventures with private Romanian companies. Large deals involving the GOR - particularly public-private-partnerships- have been stymied by vested political and economic interests and bogged down by inaction within and lack of coordination among governmental ministries. Privatizations by lesser-known buyers have been at times obstructed by the privatization agency's failure to honor its commitments or take other actions consistent with the best interests of the privatized enterprise.

EU Accession

Romania has worked to create a legal framework consistent with a market economy and investment promotion, and is moving ahead with EU-compatible legislation in its quest to join the European Union. Implementation lags, however. With an increasing number of EU-driven pieces of legislation, it is at times hard for Romania to balance its EU accession goals with its WTO undertakings. To date, Romania has added into its national legislation over 2000 primary and secondary pieces of legislation from the EU acquis.

Romania provisionally closed pre-accession negotiations with the EU in December 2004. Pending continued progress in complying with membership criteria, Romania is to become a EU member on January 1, 2007. However, the EU added a safeguard clause into Romania's Accession Treaty, which enables the EU to postpone Romania's accession by one year, to January 1, 2008, if there is clear evidence that Romania is manifestly unprepared to meet the requirements of EU membership.

The U.S. Department of Commerce recognized Romania as a market economy for anti-dumping investigation purposes in March 2003. Romania also received functioning market economy status from the EU in October 2004, thus meeting a necessary condition for EU membership. However, Romania's ability to withstand competitive pressures after EU accession remains a concern.

Legal Framework

Romania's legal framework for foreign investment is contained in a substantial body of law, largely passed in the late 1990s and subject to frequent revision since. Local counsel should be engaged to navigate through the various laws, decrees, and regulations.

Romanian legislation and regulation provides national treatment for foreign investors, guarantees them free access to domestic markets, and allows foreign investors to participate in privatizations. There is no limit on foreign participation in commercial enterprises. Foreign investors are entitled to establish wholly foreign-owned enterprises in Romania (although joint ventures are more typical) and to convert and repatriate 100 percent of after-tax profits. Foreign firms are allowed to participate in the management and administration of the investment, as well as to assign their contractual obligations and their rights to other Romanian or foreign investors.

Foreign investors may engage in business activities in Romania via any of the following methods:
- Setting up new commercial companies, subsidiaries or branches, either wholly owned or in partnership with Romanian natural or legal persons;
- Participating in the increase of capital of an existing company or the acquisition of shares, bonds, or other securities of such companies;
- Acquiring concessions, leases or agreements to manage economic activities, public services, or the production of subsidiaries belonging to commercial companies or state-owned public corporations;
- Acquiring ownership rights over non-residential real estate improvements, including land, via establishment of a Romanian company;
- Acquiring industrial or other intellectual property rights;
- Concluding exploration and production-sharing agreements related to the development of natural resources.

Foreign investor participation can take the form of foreign capital, equipment, means of transport, spare parts and other goods, services, intellectual property rights, technical know-how and management expertise, or proceeds and profits from other businesses carried out in Romania. Foreign investment must comply with environmental protection, national security, defense interest, public order, and public health regulations.

Privatization

Romania has made significant progress in privatizing industrial companies. To date, less than 5% of the industrial assets are still state-owned. Privatization in the energy sector also has progressed, with the privatization of national oil company Petrom, two energy distribution companies, and two natural gas distribution companies. Romania has granted some companies involved in energy privatizations with safeguards against paying for environmental remediation resulting from past contamination.

Under current law, the government ministry or agency that has authority over a state-owned company (the State Asset Resolution Authority (AVAS), the Ministry of Economy and Commerce, Ministry of Transportation, Ministry of Communications and IT, or in some cases, local government) also has the authority to privatize it. The law on privatization requires the setting up of pre-privatization management team to facilitate restructuring of the company and eventual privatization. The law permits the responsible authority to hire an agent to handle the entire privatization process.

Buyers of state-owned companies must negotiate requirements and restrictions concerning the company's purpose, scope of activities, turnover, and social protections in the form of limited layoffs or funding for retraining programs. Privatizing agencies continue the practice of rolling into privatization agreements provisions of previously negotiated collective labor agreements, which are labor-protective and restrict layoffs. Prospective investors are strongly advised to make a thorough due diligence review before any acquisition.

Property and Contractual Rights

Property and contractual rights are recognized, but enforcement through the judicial process can be extremely difficult, costly, and lengthy. Foreign companies engaged in trade or investment in Romania often express concern regarding the lack of commercial experience of Romanian courts. Judges generally have little experience in the functioning of a market economy, international business methods, intellectual property rights, or the application of new Romanian commercial law.

¶B. Conversion and Transfer Policies

Romanian legislation does not restrict the conversion or transfer of funds associated with direct investment. All profits made by foreign investors in Romania may be converted into hard currency and transferred abroad at the market exchange rate after payment of taxes. However, some conversion and transfer procedures can be time-consuming due to Romanian bureaucracy.

The Leu is freely convertible on current-account transactions, in accordance with the IMF's Article VII. Proceeds from the sale of shares, bonds, or other securities, as well as from the conclusion of an investment, can also be repatriated. There is no limitation on the inflow or outflow of funds for remittances of profits, debt service, capital gains, returns on intellectual property or imported inputs.

In February 1998, the Romanian government implemented new regulations that liberalized foreign exchange markets. However, procedural delays in processing capital outflows remain, mainly from the lack of a domestic inter-bank electronic system, which is under development and scheduled to become operational in 2005.

Capital inflows are relatively free from restraint. Only the opening of the ROL deposits by non-residents still requires approval by the Central Bank, in order to prevent inflows of "hot money" from abroad, but this restriction is expected to be removed in April 2005 as capital account liberalization advances. According to Romania's agreements with the European Union and international financial organizations, Romania will gradually implement such liberalization prior to Romania's accession to the EU (i.e. enable ROL-denominated deposit accounts to be opened by foreigners with resident financial institutions, and current and deposit accounts by residents abroad).

¶C. Expropriation and Compensation

The law on direct investment includes a guarantee against nationalization and expropriation or other equivalent actions. The law allows investors to select the court or arbitration body of their choice to settle potential litigation. Since 1989, there have been two American expropriation claims, one arising from a controversial privatization and the other the nationalization of an investor's assets. Several cases involving property nationalized during the communist era remain unresolved.

Investors should be aware, when purchasing land or a former state-owned company, that in those cases where a former owner wins title to a privatized asset, it may be restituted in kind and the investor compensated by the public institution that privatized it. If restitution is not possible in kind, the public institution must compensate the former owners. In either case, the current or former owners run the risk of less than fair market value compensation. Prospective investors must conduct a careful due diligence review encompassing potential restitution claims.

¶D. Dispute Settlement

Arbitration

Romania recognizes the importance of arbitration in the settlement of commercial disputes. Many agreements involving international companies and Romanian counterparts provide for the resolution of disputes through third-party arbitration. Romania is a signatory to the New York Convention of 1958 regarding the recognition and execution of foreign arbitration awards.

Romania is also a party to the European convention on international commercial arbitration concluded in Geneva in 1961 and a member of the International Center for the Settlement of Investment Disputes (ICSID).

Romanian law and practice recognize applications to other internationally known arbitration institutions, such as the ICC Paris Court of Arbitration or the Vienna United Nations Commission on International Trade Law (UNCITRAL). Romania also has an International Commerce Arbitration Court administered by the Chamber of Commerce and Industry of Romania (the "Arbitration Court"). Arbitration awards are enforceable through Romanian courts under circumstances similar to those in Western countries.

Bankruptcy

Romania's bankruptcy law contains provisions for liquidation and reorganization that are generally consistent with western legal standards. These laws usually emphasize enterprise restructuring and job preservation. Legal and economic education and the training of judges and lawyers lags behind law-making, which often results in inconsistent outcomes. Moreover, social concerns often prevail over economic reasoning, resulting in the survival of overstaffed loss-making companies which should otherwise be dissolved.

To mitigate the time and financial costs of bankruptcies, Romanian legislation provides for administrative liquidation as an alternative to bankruptcy. However, investors have complained that the liquidators lack the competence and incentive to expedite liquidation proceedings. For state-owned loss-making companies, state subsidies, accumulation of arrears, debt rescheduling and debt-for-equity swaps are the preferred alternatives to putting such companies through insolvency or bankruptcy procedures. Both state-owned and private companies tend to opt for judicial reorganization to avoid bankruptcy.

¶E. Performance Requirements/Incentives

Incentives

Since 1991, Romania's legislation has seesawed between granting, amending and suspending investment incentives. The availability of incentives is dependent on the economic situation, with the government at times suspending incentives in order to tighten fiscal policy. To meet the requirements of the EU body of law termed the "acquis communitaire" (short form: the "acquis"), Romania is revisiting its fiscal incentives to bring them in line with the EU state aid regulations. Investors are encouraged to verify the current status of investment incentives. As a general rule, new fiscal regulations do not grandfather past incentives.

As Romania prepares for EU accession, customs and tax incentives are being phased out for investors in free trade and economically disadvantaged zones. In line with the revised state-aid law, Romanian has capped the state aid available for major investments based on the investment size and location. The state aid available through incentives for companies in free trade zones and disadvantaged zones has been capped at 50% of the investment, and likewise state aid for small and medium-sized enterprises (SMEs) to 65% of the investment. Prospective investors are advised to investigate thoroughly the current status of fiscal incentives and consider possible future changes resulting from EU accession negotiations when drafting business and investment plans.

To reduce initial startup costs, a system of industrial parks and technological parks is being created. Tax incentives are available under the law solely for the industrial park operator, while companies that establish themselves in the park benefit from access to utility hookups and infrastructure, and eventual local tax rebates within state aid caps.

Tax System

Romania has revised its tax system to bring it closer to EU models and more in line with the recommendations of the World Bank and IMF.

In December 2004, a new government amended the Fiscal Code by emergency ordinance, abolishing tax brackets and establishing a 16% flat tax on personal incomes. Corporate taxation will likewise be reduced from 25% to 16%. Both of the measures are to come into force

beginning January 1, 2005. Offsetting these cuts is an increase in the micro-enterprise tax from 1.5% to 3%, and a rise of the tax on dividends obtained by individuals from 10% to 15%, in line with the corporate dividend tax of 15%.

Tariff Preferences

Like many other Central and Eastern European countries, Romania provides tariff preferences for EU goods under its association agreement with the EU. In 2003, Romania came under generalized system of preferences (GSP) scrutiny because of preferential tariff treatment (reverse preferences) it offers the EU, but no formal review was taken because Romania reduced its tariffs on Bourbon - the main U.S. industry petitioner. However, Romania took no further action to reduce tariff preferences for other U.S. products, and may actually raise some of the tariffs previously reduced. In June 2004, a pharmaceutical company petitioned USTR for review of Romania's GSP status.

¶F. Right to Private Ownership; Establishing Firms

The Romanian constitution, adopted in December 1991, and revised in 2003, guarantees the right to ownership of private property. Mineral, air rights, and similar rights are excluded from private ownership. At the present time, property can only be purchased by foreigners through their participation in a Romanian company. As of January 1, 2007, EU citizens will be able to buy land without restrictions.

Foreign investors involved with commercial companies having any foreign capital may acquire land or property necessary for fulfilling or developing the company's corporate goals. If the company is dissolved or liquidated, the land must be sold within one year of the company's closure and may be sold only to a buyer(s) with the legal right to purchase such assets. Foreign investors cannot purchase agricultural land at this time. Under Law 268/2001, investors can purchase shares in agricultural companies that can lease land in the public domain from the State Land Agency.

¶G. Protection of Private Property Rights

Mortgages

Law No. 190/1999 on mortgage loans for real estate investments allows a debtor's receivables to be used as a guarantee, and specifically addresses the protection of both borrowers and creditors, in an effort to minimize risk to the lender. Domestic private and foreign capital banks and investment funds freely compete on the mortgage market with the state-supported Banca Comerciala Romana (BCR) and with the state-budget National Housing Agency (ANL). Using its limited state budget resources, ANL targets young applicants and charges interest of 7% per annum in EURO for applicants under 35, and 9% for applicants over that age. Banks charge an average 9.87% per annum for USD loans and 9.185% for Euro loans, practice more flexible terms, and have greater resources available for mortgages. Usually, interest charged tracks LIBOR at six months for loans granted in USD and EURIBOR at six months for loans granted in Euro, with the addition of Romanian country spread.

Intellectual Property Rights

Romania is a signatory to international conventions concerning intellectual property rights (IPR), including TRIPS, and has enacted legislation protecting patents, trademarks, and copyrights. Romania signed the Internet Convention to protect on-line authorship. While the IPR legal framework is generally good, enforcement is woefully weak. Romania has passed border IPR control enforcement provisions as required under the WTO, yet customs authorities and border police controls remain equally lax. As result of persistent problems in the enforcement of intellectual property rights, the U.S. Trade Representative (USTR) kept Romania on its Special 301 Watch List for 2004. High piracy levels continued across all sectors, optical disc piracy grew, and poor border enforcement led to a surge in imports of pirated material. The situation is further exacerbated by the lack of resources dedicated to enforcement. Prosecution of IPR violators is rare, and when cases are adjudicated, penalties meted out are light. No one has gone to jail for IPR piracy.

Patents

Romania is a party to the Paris Convention for the protection of industrial property and subscribes to all of its amendments. Foreign investors are therefore entitled to the same treatment as Romanian citizens. Patents are valid for 20 years. A patent application can be contested for six months. A modern Patent Law (No. 64/91) broadens and clarifies the basis on which a patent is granted. By GOR Decision 499 of May 2003, technical enforcement rules on the Patent Law came into force. Several other laws (No. 129/92, on the protection of industrial drawings and designs; No. 16/95, on the protection of integrated circuit designs, etc.) have helped bring Romanian patent legislation up to international standards. Legislation providing for transitory ("pipeline") patent protection was enacted in early 1998. The Romanian Parliament passed legislation to protect confidential drug test data submitted to regulatory authorities for marketing approval. Law 123 of April 2004 clearly articulates data exclusivity provisions.

Trademarks

In 1998 Romania passed a new law on trademarks which is generally consistent with international standards. Areas that require improvement are administrative procedures and sanctions. Romania is a signatory to the Madrid Agreement relating to the international registration of trademarks. Trademark registrations are valid for 10 years from the date of application, and renewable for similar periods.

Copyrights

Romania is a member of the Bern Convention on Copyrights. Its 1996 law on protection of copyrights and neighboring rights is among the most modern in this field. The Romanian parliament ratified the latest versions of the Bern and Rome conventions. The Romanian Office for Copyright protection (ORDA) was established in 1997, and ostensibly oversees copyright enforcement. However, copyright law enforcement is a low priority for Romanian prosecutors, judges, police officers, and customs officers. Some in government, including those responsible for enforcement, view copyright piracy as a "victimless crime." This attitude, coupled with lack of resources, has resulted in weak enforcement of copyright law and the failure to prosecute and punish violators. Copyright infringement in software, music, and video is pervasive throughout Romania. Although on a decline over the past few years, piracy rates are still high. Latest estimated piracy rates by sector are: 73% of business software; 95% of entertainment software; 56% of music; and 55% of video.

Semiconductor Chip Layout Design

Law No. 16/1995 protects semiconductor chip layout design. In order to benefit from this law, the designs must be registered per GOR decision no. 535/1996 with the Romanian Trademark Office.

¶H. Transparency of the Regulatory System

Cumbersome and non-transparent bureaucratic procedures are a major problem in Romania. Foreign investors point to the excessive time it takes to secure necessary zoning permits, property titles, licenses, and utility hook-ups. Furthermore, regulations change frequently, often without advance notice. These changes, which can significantly add to the costs of doing business, make it difficult for investors to develop effective business plans.

Recognizing the need for more effective communication with foreign investors and Romanian private businesses, in April 2002 the GOR instituted a preliminary consultation procedure before drafting business-related legislation. As a result, some ministries, such as the Ministry of IT and Communications, do consult with businesses, but not all. The labor code adopted in 2003 is a glaring example of the GOR's failure to consult with or listen to the business community. The controversial code gives extensive new rights to labor unions and employees and is a significant impediment to new foreign direct investment. Following general elections in November and December 2004, the GOR pledged to amend some aspects of the code, but whether it will be able to do so in the face of labor unions' objections remains to be seen.

Many foreign investors feel they are unfairly targeted

by Romanian tax authorities for audits and reviews and that Romanian authorities view them as "cash cows" that can be milked to fill government coffers. Unlike most Romanian companies, foreign investors generally have good financial records, making investigation easier. Foreign investors also tend to be more conscious of the need to remain in compliance with local laws and regulations. Despite the establishment of a new Minister Delegate for Control in June 2003 to coordinate the audits of the various ministries and government agencies, redundant or too-frequent audits and reviews continue to be a hindrance.

The presence of large state-owned and government-subsidized enterprises in the economy is a major impediment to the efficient mobilization and allocation of investment capital. An EU-inspired law on state aid aimed to limit state aid of any form (direct state subsidies, debt rescheduling schemes, debt for equity swaps for utility arrears, or discount prices). However, implementation of the law has been slow and preferential debt rescheduling (and on occasions forgiveness) by the GOR has continued.

¶I. Efficient Capital Markets and Portfolio Investment

Capital Markets

Romania seeks to develop efficient capital markets. Ordinance No. 18/93 and Government Decision No. 552/92 established a National Securities Commission (CNVM) charged with regulating the securities market in order to protect investors. The process provides for the registration and licensing of brokers and financial intermediaries, filing and approval of prospectuses, and approval of market mechanisms.

Romania officially re-opened the Bucharest Stock Exchange (BSE) on June 22, 1995. On November 20, 1995, the stock exchange made its first transactions after a hiatus of 50 years. The BSE operates a two-tier system that, at present, lists a total of 60 companies, with 17 companies in the first tier. The official index, BET, is based on a basket of the 10 most active stocks listed on the first tier. The BSE has a home page at http://www.bse.ccir.ro.

In September 1996, RASDAQ, an over-the-counter stock market, was inaugurated. It is supported by several independent registries and is a depository for Romanian securities. 4,040 companies are listed on the RASDAQ, although less than 200 companies are actively traded on an average day. RASDAQ has a home page at http://www.rasd.ro.

The BSE and RASDAQ are set to merge in 2005. The new Capital Markets Law 297/2004 allows the Bucharest Stock Exchange to incorporate as a stock company, which permits its merger with the OTC-market, RASDAQ. Once the National Securities Commission (CNVM) approves the merger and the technical plan, the consolidation process should require 5-6 months to complete.

Despite the presence of two stock exchanges, Romanian capital markets have developed more slowly than might be expected. This is due in part to legislative instability, non-transparent privatization, lack of performance and liquidity of most listed companies and poor corporate governance. In 2002, the GOR issued several ordinances designed to increase liquidity and transparency and encourage portfolio investment. The GOR also granted additional power to the National Securities Commission (CNVM). Securities Collective Placement Organizations are now allowed to invest locally and internationally in foreign currency-denominated instruments.

Tight competition has brought trading fees down, but listed volumes make it difficult to place large purchase orders. This, in conjunction with non-transparent disclosures and the lack of annual audit reports, tends to discourage large institutional investors. Country funds, hedge funds, and venture capital funds continue to participate actively in the capital markets.

The Romanian government has responded to complaints by U.S. investment funds regarding the abuse of minority shareholder rights by including some protections in a 2002 GOR ordinance on securities, financial investments and regulated markets. The new reforms allow shareholders owning more than 10% of a stock to request a general shareholders meeting. Dividend payments must now remain in effect six months after the announcement. An extraordinary shareholders' meeting must approve purchase or sale/rent/lease of fixed assets worth over 20% of the company's total assets. Law 525 of July

2002 ratified the ordinance on securities and regulated markets, and was complemented by Law 512 on commodity exchanges and derivatives.

Banking Sector

Romania's largest bank, the state-owned Romanian Commercial Bank, with assets totaling $6.5billion (27% of total banking assets), is to be privatized in installments. 25% plus two shares were sold to two international financial organizations, EBRD and IFC, for a combined $222 million in 2004. The contract stipulates that the stock is to be purchased back by the GOR in 2006 if no strategic investor acquires a majority stake in the bank by then. If a strategic investor places a binding offer, the two international finance organizations are to redeem their shares to the GOR at a price per share not lower than the one initially paid. In turn, the GOR will re-sell the shares to provide the investor a 51% portfolio stake, (8% of the stock has already been sold to bank management and employees.)

After BCR, of the 39 banks operating in Romania, the Romanian Bank for Development (BRD, Societe General), with $ 3.1 billion assets (12.95% of total), is the second largest bank, followed by Raiffeisen Bank ($1.4 billion, 7.1%), ABN-AMRO Bank, ($1.3 billion, 6.6%), and the National Savings House (CEC), $1.28 billion, 6.5%. Citibank is the major U.S. brand name, with approximately $500 million in assets (market share of about 2.3%).

Removing non-performing assets from the banking sector cost Romania $2.2 billion, almost 7% of the annual GDP in the late nineties. According to the Romanian Central Bank, non-performing past due and doubtful loans now represent only 0.6% of the total loan portfolio, but this is probably a substantial underestimate.

The GOR actively encourages foreign investments in the banking sector, and there are no restrictions on mergers and acquisitions. Few hostile take-over attempts have been reported in Romania, with the result being that Romanian law has not focused on limiting potential mergers or acquisitions. There are no Romanian laws prohibiting or restricting private firms' free association with foreign investments. Capital account liberalization is in progress and scheduled to be completed by 2005, with the exception of land purchase by non-residents, for which Romania was granted a 7-year phase-in period by the EU.

¶J. Political Violence

There have been no incidents in Romania involving politically motivated damage to foreign investments (projects and/or installations). Major civil disturbances are not expected to occur in Romania in the near future.

¶K. Corruption

According to Transparency International, Romania is included in the tier of countries considered the most corrupt. U.S. firms frequently complain of government and business corruption in Romania. The customs service, municipal zoning offices, local financial authorities, and other bodies are influenced to some degree by corruption. In some cases, demands for payoffs by mid- to low-level officials reach the point of harassment.

Romanian law and regulations contain provisions intended to prevent corruption, but enforcement is generally weak. Corruption is currently punishable under a variety of statutes in the penal code. Prison sentences are sometimes imposed, but powerful and influential individuals often evade prosecution.

The GOR announced a National Anti-Corruption Plan in spring 2003 and passed an anti-corruption law in April of that year. The Plan contains an impressive list of measures and commitments that constitute key benchmarks for judging the GOR's commitment to combat corruption. The implementation of these measures and commitments has lagged, undercutting the state's professed commitment to follow through on its anti-corruption policies. The new center-right government came to power in December 2004, in part based on a pledge to combat corruption. At the time of drafting it was premature to make any judgment about GOR commitment to this pledge. Nevertheless, the USG will continue to work actively with the GOR to secure more effective anti-corruption measures.

A new criminal code came into effect in 2003. Romania passed an anti-money laundering law in 1999 which set up the Romanian National Office for the Prevention and Control of Money Laundering (NOPCML). Romania followed this legislation with the Law on the Prevention and Sanctioning of Money Laundering in 2002. With U.S. help, the Romanian government established in September the National Anti-Corruption Prosecutors' Office (PNA) in 2002, staffed by prosecutors and police to combat corruption. Despite these measures, most anti-corruption efforts remain focused on low-level corruption. To date, criminal prosecutions of only low and mid-level officials and functionaries have been carried to completion.

Romania is a member country of the Southeast European Cooperation Initiative (SECI), and it has signed and ratified the Agreement on Cooperation to Prevent and Combat Transborder Crime of May 1999. Bucharest hosts the SECI Regional Center for Combating Corruption and Organized Crime, and Romania is one of the three members of the Joint Cooperation Committee.

To reduce corrupt practices in public procurements, in March 2002 a web-based e-procurement pilot system was inaugurated and is available at www.e-licitatie.ro. The system is a transparent listing of ongoing auctions and closed auctions, with the names of the winners and closing prices made available to the public. The use of e-licitatie has increased government efficiency, reduced GOR vulnerability to corruption, and improved fiscal responsibility in government procurement. E-procurement increased from 159 government clients and 600 suppliers in its initial months matching the procurements of 1,000 state entities with offers from 10,000 bidders. With a turnover of EURO 300 million in 2003, the system resulted in an estimated average 22% savings rate, saving the budget EURO 100 million in two years. Initially used solely for standard products, the program has grown to include complex projects (e.g. state-financed sports halls for public schools). The system does not take the human element completely out of the decision-making process, as the bids for complex supplies and projects are still reviewed by appraisal committees. Pre-qualification criteria for prospective bidders and contract follow up by the end-user also leave room for corruption.

Court System

The Romanian judicial system suffers from corruption, inefficiencies, lack of competence, and excessive workloads. Divergent and often contradictory rulings have alienated both investors and ordinary citizens and discredited the Romanian judicial system. Companies routinely complain that commercial disputes take too long to resolve through the court system and once a verdict is reached, court orders are not enforced. Low salaries result in clerks, attorneys and judges being susceptible to bribes or other "extra-judicial" payments, most commonly to "speed up" litigation or to assure a particular judge is assigned to a case. Courts are overburdened and the number of magistrates and judges too small. Significantly, litigants in virtually all cases have unrestricted right to appeal their cases all the way to the High Court of Cassation and Justice, which clogs court dockets throughout the system and introduces lengthy delays.

Cyber Crime

Romania has one of the world's highest occurrences of internet credit card fraud. The problem, which surfaced in the fall of 1998, has escalated to a steady stream of complaints, some of which involve U.S. companies being defrauded of millions of dollars. The most common problems result from the use of stolen credit card numbers for the purchase of goods on-line. An e-commerce law that defines and punishes cyber crime was passed in June 2002 and came into force in early July 2002.

Romanian hackers also have gained notoriety for hacking into U.S. companies' servers and stealing proprietary information, including customer credit card data. There have been cases where Romanian hackers have offered to sell the U.S. company the means by which they hacked the company's server. On other occasions, the hackers have threatened to release the sensitive data or the means to hack the system unless a specific amount of money is paid. Several recent investigations into and arrests of cyber-crime by Romanian authorities may serve as a deterrent to new hackers.

¶L. Bilateral Investment Agreements

The U.S.-Romanian Treaty on the reciprocal encouragement and protection of investment (signed May 1992, ratified

by the U.S. in 1994) guarantees national treatment for U.S. and Romanian investors. It provides a workable dispute resolution mechanism, liberal capital transfer, prompt and adequate compensation in the event of an expropriation, and avoidance of trade-distorting performance requirements.

In response to EU pressure on acceding countries to abrogate their bilateral investment treaties (BITS) with the U.S., the U.S. government negotiated an agreement with the EU and eight accession countries, including Romania, to cover any possible inconsistencies between the BITs and the countries' future EU obligations. After two years of negotiations, the U.S. and EC signed a political understanding in Brussels that preserved, in slightly amended form, bilateral investment treaties with the Czech Republic, Estonia, Latvia, Lithuania, Poland, the Slovak Republic, Romania, and Bulgaria. All eight revised BITS went to the U.S. Senate for ratification as a package. The Senate ratified the new treaties in May 2004. Romania's Parliament is expected soon to ratify the revised BIT, which will only take effect when Romania becomes an EU member.

Romania also has concluded bilateral investment protection agreements or treaties with the following countries: Albania, Algeria, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Luxembourg, Bolivia, Bulgaria, Cameroon, Canada, Chile, China, Croatia, Cuba, Czech Republic, Cyprus, Denmark, Egypt, Finland, France, Gabon, Germany, Ghana, Greece, Hungary, Indonesia, Israel, Italy, Jordan, Kazakhstan, Kuwait, Lebanon, Lithuania, Malaysia, Moldova, Mauritania, Mongolia, Morocco, Nigeria, Norway, Netherlands, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Russia, Senegal, Singapore, Slovakia, Slovenia, South Korea, Spain, Sri Lanka, Sudan, Switzerland, Tunisia, Turkey, Turkmenistan, Ukraine, United Kingdom, USA, Uruguay, Uzbekistan, Yugoslavia.

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¶M. OPIC and Other Investment Insurance Programs
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The Overseas Private Investment Corporation (OPIC) began operation in Romania in late 1992, following the signing of an investment incentive agreement in June 1992.

Romania has been a member of the Multilateral Investment Guarantee Agency (MIGA) since 1992.

¶N. Labor

Romania offers a large skilled labor force at comparatively low wage rates in most sectors. The university system is regarded as high quality, particularly in technical fields. Romanian craftsmen, engineers, and software designers win kudos for quality work from foreign managers. With appropriate on-the-job training, local labor performs well with new technologies and more exacting quality requirements. However, there continues to be a shortage of western-trained managers.

Since the revolution of December 1989, labor-management relations have occasionally been tense as a result of economic restructuring efforts and personnel layoffs. In mid-2003, unemployment officially stood at 7.8 percent of the country's active labor-force. Trade unions are vocal defenders of their prerogatives. The government adheres to the ILO convention protecting worker rights.

Many of the remaining state enterprises maintain that the first priority for an enterprise is to preserve jobs rather than turn a profit. Individual dismissals for poor performance must be carefully documented and are subject to legal challenge by the affected employee. The new Labor Code passed in 2003 makes it even harder for employers to dismiss employees for poor performance, and requires the employer to provide three options to transfer positions within the company before actual termination of employment. Foreign investors often encounter labor problems when they try to trim staff in loss-making product lines.

Current law makes it very costly to locate expatriate staff in Romania. Foreign companies often resort to expensive staff rotations, special consulting contracts, and non-cash benefits. As a rule, work permits are issued for a period of six months for a fee of $200, and may be renewed for subsequent six-month periods at $100 per renewal.

¶O. Free Trade Zones

Free Trade Zones (FTZs) operate under Law No. 84/1992, amended in 2002 and 2004. General provisions include unrestricted entry and re-export of goods, and an exemption from customs duties. The law further permits the leasing or transfer of buildings or lands for terms of up to 50 years to corporations or natural persons, Romanian and non-Romanian.

Currently, there are six FTZs: Sulina (located at the mouth of the Danube); Constanta-Sud Agigea (located close to the port of Constanta, at the entrance to the Black Sea-Danube Canal); Galati (located about 100 km from the Danube mouth); Braila (located 30 km up the Danube from Galati); Curtici-Arad (located about 30 km from the border with Hungary); and Giurgiu (located on the Danube, 60 km south of Bucharest)

The Administrator of each FTZ is responsible for all commercial activities performed within the zone. FTZs are under the authority of the Ministry of Transportation, Construction, and Tourism.

¶P. Foreign Direct Investment Statistics

Despite some substantial gains in recent years, direct investment flows into Romania have remained relatively low compared to other countries in the region. According to data provided by the Romanian Trade Registry, cumulative foreign direct investment for the period between 1990-2003 totaled $10.4 billion, of which $1.42 billion represents 2003 inflows.

At the end of September 2004, cumulative foreign direct investment (FDI) since 1990 rose to $11.8 billion.

Preferred areas for foreign investment include:

--Automobile and automotive components (Renault, Daewoo, Daimler Benz, Siemens, Continental, Alcoa, Delphi Packard, Johnson Controls, Honeywell Garrett, Michelin);

--Banking and finance (Citibank, Socit Gnrale, ABN Amro Bank, AIG, ING Barings, Hypovereinsbank, Volksbank, Raiffeisen, Banca di Roma);

--Telecommunications (Qualcomm, France Telecom, OTE, Telesystem International Wireless Services, Airtouch-Vodafone);

--Hotels (Hilton, Marriott, Best Western, Howard Johnson, Sofitel, Crowne Plaza, Accor);

--Manufacturing (Timken, Trinity Industries, General Electric, LNM, Marco, Solectron, Holcim, Lafarge, Heidelberg);

--Consumer products (Procter and Gamble, Unilever, Henkel, Colgate Palmolive, Kraft, Coca-Cola, Parmalat, Danone);

);

--Retail chains (Metro, Delhaize, Carrefour, Cora, Billa, Selgros).

Significant U.S. direct investors (or investors with representative branch offices) include:

--Advent Central and Eastern Europe - investment fund
--AIG - insurance
--AIG New Europe Fund - investment fund
--Alcoa - automotive, aluminum processing
--Bunge - food
--Citibank - banking
--Coca-Cola - beverage, food
--Colgate Palmolive - consumer products
--Cooper Cameron - gas field equipment manufacturer
--Delphi Packard - automotive
--General Electric - aircraft components
--Hoeganess - iron powder for automotive
--Honeywell Garrett - automotive
--Johnson Controls - automotive
--Kodak - film processing
--Kraft - food
--Marco Group - aluminum processing
--McDonald's - food
--New Century Holding - investment fund
--Philip Morris - tobacco products
--Procter and Gamble - consumer products
--Qualcomm - telecommunications
--Romanian-American Enterprise Fund - investment fund

--Sara Lee - apparel
--Solectron - contract manufacturing (ICT)
--Timken - industrial bearings
--Trinity Industries - railcars
--UPC - cable television operator
--Washington International Group - engineering

In addition to these companies, the European Bank for Reconstruction and Development (EBRD) remains the single largest investor (debt plus equity) in Romania with some $3.31 billion invested. The U.S. is a 10 percent shareholder in the EBRD.

As of end-September 2004, Romania's biggest investors are:

-- Holland -- $ 2.01 billion, or 17.90% of total FDI, with investments in telecommunications, banking, insurance, detergents, and food;
-- France -- $ 1.50 billion, or 12.7%% in food, telecommunications, IT, machine-construction, cement, agriculture, banking, hypermarkets;
-- Germany -- $ 1.02 billion, or 8.6% in insurance, food, machine construction, banking, chemicals, hypermarkets;
-- U.S. -- $ 876.7 million or % 7.4% in ICT, automotive, telecommunications, hospitality, agriculture, manufacturing, consumer products.

¶2. AmEmbassy Bucharest's reporting telegrams are available on the Bucharest SIPRNet webwsite: www.state.sgov.gov/p/eur/Bucharest.

Crouch